IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WA.No. 1860 of 2000(A)

AGAINST THE JUDGEMENT IN OP.NO.25620/1999 Dated 25/05/2000

APPELLANT: RESPONDENT:

THE DEPUTY COMMISSIONER OF INCOME TAX,
ALAPPUZHA.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENT: PETITIONER:

M/S. SREE MURUGAN TRADING CO.,
NEAR BUS STAND, HARIPAD,
REPRESENTED BY ITS MANAGING PARTNER.

BY ADV. SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22/10/2007, ALONG WITH OP.NO.9949 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1860 OF 2000
and
O.P. NO. 9949 OF 2001

Dated this the 22nd October, 2007

JUDGMENT

H.L.DATTU, C.J.

The Income-tax Department ('Revenue' for short) has filed W.A.No.1860 of 2000 before this Court, being aggrieved by the orders passed by the learned single Judge in O.P.No.25620 of 1999, dated 25th May, 2000.

2. In O.P.No.9949 of 2001, the assessee has called in question Exts.P11 and P12 notices dated 8.11.2000 and 5.3.2001 respectively, issued by the Deputy Commissioner of Income-tax, Circle – I, Alleppey.

3. To answer the contentions canvassed by the learned counsel appearing for the parties to the lis, the brief facts require to be noticed. They are as under: The assessee is a partnership firm doing business in arrack. For the assessment year 1989-90, the assessee had filed its return under Section 139 of the Income Tax Act. The assessing authority had completed the summary assessments under Section 143 (1)(a) of the Income Tax Act.

4. After completion of the summary assessments, the Income-tax Officer had taken up the scrutiny assessment proceedings for the same assessment year. Being aggrieved by the notice so issued for the purpose of scrutiny assessments, the assessee had filed an appeal before the Commissioner of Income-tax (Appeals). In the appeal, the assessee has raised two contentions, namely, with regard to the limitation, that is, the notice issued by the assessing authority is beyond the time prescribed under the provisions of Section 143 (2)(b) of the Act and also on the merits of the notice so issued. The Commissioner of Income-tax

(Appeals) has disposed of the appeal, holding that the notice issued by the assessing authority under Section 143(2) of the Act is within the time prescribed under the Act and in so far as the merits of the case is concerned, it has leaned in favour of the assessee.

5. The assessee, being aggrieved by the order so passed by the Commissioner of Income-tax (Appeals), had carried the matter in appeal before the Income Tax Appellate Tribunal. The Tribunal, without going into the merits or demerits of the assessee's case, was pleased to dispose of the appeal on the ground that the notice issued for the scrutiny assessments is beyond the time prescribed under the Act.

6. After disposal of the appeal by the Tribunal, the Revenue has initiated proceedings under Section 148 of the Act to bring to tax the escaped assessment. Aggrieved by the notice so issued, the assessee had filed O.P.No.25620 of 1999 before this Court. A learned single Judge of this Court by judgment dated 25th May, 2000, had disposed of the Original Petition and in that, had made it clear that the Revenue can assess only the escaped assessment of Rs.4,70,000/-, as pointed out by the Commissioner of Income-tax (Appeals), for the reason that the Revenue had not filed any appeal against the order passed by the Commissioner of Income-tax (Appeals). The learned single Judge had also observed that what is questioned by the assessee is only a notice issued under Section 148 of the Act and, therefore, it can file a detailed reply before the authority objecting to the notice so issued and the Court had further directed the assessing authority to consider the reply that may be filed by the assessee and pass a speaking order.

7. After the disposal of the appeal, the assessing authority had intimated

the assessee that it intends to bring to tax the income which had not been assessed in the assessment year 1989-90. Aggrieved by the opinion so expressed by the assessing authority, assessee is before this Court in O.P.No.9949 of 2001. Since all these proceedings are between the same assessee, the Writ Appeal and the Original Petition are heard and disposed of by this common judgment.

8. Sri.George K. George, learned counsel appearing for the Revenue would submit that in view of what has been stated by the Apex Court in the case of **GKN Driveshafts (India) Ltd.** v. **Income-tax Officer and others** ((2003) 259 I.T.R. 19) and since no other reasons are forthcoming in the note prepared before issuing Section 148 notice, the Revenue is restricting the notice issued under Section 148 of the Act only to the escaped assessment of Rs.4,70,000/-, which was sustained by the Commissioner of Income-tax (Appeals). In fact, the Revenue has filed W.A.No.1860 of 2000 only aggrieved by the direction issued by a learned single Judge of this Court, directing the Revenue to assess only the escaped assessment of Rs.4,70,000/-, as pointed out by the Commissioner of Income-tax (Appeals).

9. Since the Revenue itself intends to bring to tax only what has been pointed out by the Commissioner of Income-tax (Appeals) in the orders passed in the appeal filed by the assessee, in our opinion, as on today, the relief sought for by the Revenue in this Writ Appeal would not survive for consideration of this Court. Therefore, the Writ Appeal is disposed of as having become unnecessary. We make it clear that the Revenue can only assess on the escaped assessment of Rs.4,70,000/- as pointed out by the Commissioner of Income-tax (Appeals) in

the appeal filed by the Revenue and that action be after considering the objections that may be filed by the assessee.

9. In so far as O.P.No.9949 of 2001 is concerned, this Court while entertaining the Original Petition had directed the assessing authority to consider the reply that may be filed by the petitioner to the notice issued under Section 148 of the Act and pass a speaking order. Pursuant to the direction so issued, we are informed by Sri.George K.George, learned counsel appearing for the Revenue, that the assessing authority has passed an order on 24.1.2006. In view of that, at this stage, it may not be necessary for this Court to quash Exts.P11 and P12 notices. Now a direction is issued to the assessing authority to complete the re-assessment proceedings as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment, keeping in view the observations made by us in the course of this judgment.

10. Consequently, all pending interlocutory applications are rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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